REMARKS

This responds to the Office Action dated on July 16, 2007. No claims are amended, canceled or added. Thus, claims 9-18 and 21-30 remain pending in this application.

In the Specification

The specification has been amended to update the priority information. No new matter has been added.

Double Patenting Rejection

Claims 9-18 and 21-30 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,654,640.

Applicant notes that the Office has asked for a terminal disclaimer at this time, and has indicated its intent to mail an office action (rather than call the Applicant) if a double patenting rejection remains in the case. Applicant respectfully submits that it is premature to send in a terminal disclaimer, as long as a §102/103 rejection remains and claims may be amended/canceled/ added during prosecution. As the claim have not been otherwise identified to be allowable, it has not been determined what, in fact, is being terminally disclaimed.

Applicant will address the double patenting rejection when the claims are otherwise found in condition for allowance. Applicant continues to invite the Examiner to call Applicant's representative at 612-373-6960 to request a Terminal Disclaimer if the claims are otherwise found to be in condition for allowance.

§102/§103 Rejection of the Claims

Claims 9-11, 14, 18, 21, 28 and 30 were rejected under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Kroll (U.S. Patent No. 5,741,307). Applicant respectfully traverses.

Applicant's previous arguments remain pertinent. On page 5 of the Office Action, the Office responded to Applicant's arguments, asserting:

The arguments are directed to elements/limitations that are not claimed, such as "the capacitor is charged from Vd to VI at which point the time measurement begins" or "the capacitor begins to charge before the time measurement begins". It is noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. . . . As stated in the rejection, the charge time is measured (i.e. the rate of charging) and it is inherent that the system use some predetermined programmed beginning and ending voltage (VI and VF) in order to measure this rate of charge since the capacitor has to be charged from some initial voltage to some final voltage to have a rate of charge.

Applicant disagrees. As highlighted below, claims 9 and 21 recite a discharge voltage level (Vd), and recite charge time measurement set-up parameters that include a final voltage (VF) and an initial reference voltage (VI). Both claims 9 and 29 indicate that the capacitor is discharged to the discharge voltage (Vd) before beginning a time charge measurement, that the time charge measurement begins that the initial reference voltage (VI), that VI is greater than Vd, and that the charge time measurement ends at the final voltage (VF).

9. (Original) A pacemaker, including:
a battery power terminal for a pacemaker battery;
a capacitor electrically connected to the battery power terminal;
pacemaker control circuitry electrically connected to the battery power terminal and the capacitor for controlling current flow from the battery power terminal to the capacitor to charge the capacitor and **to discharge the capacitor to a discharge voltage level (Vd) before beginning a time charge measurement**; and
charge time measurement (CTM) control circuitry electrically connected to the pacemaker control circuitry and adapted to:
    access a predetermined set of charge time measurement set-up parameters and a predetermined elective replacement time (ERT) charge time limit associated with an AC impedance target for the battery;
    determine a rate of charge storage in the capacitor using the predetermined set of charge time measurement set-up parameters; and
    declare an ERT using the determined rate of charge storage in the capacitor and the ERT charge time limit,
wherein **the predetermined set of charge time measurement set-up parameters** to be accessed by the CTM control circuitry **include**:
    a final voltage (VF) to end the charge time measurement for determining the rate of charge storage in the capacitor; and

an initial reference voltage (VI) to begin the charge time measurement for determining the rate of charge storage in the capacitor, VI being greater than Vd.

21. (Original) A system, comprising:

a battery power terminal for a battery;

a capacitor electrically connected to the battery power terminal;

means to control current flow from the battery power terminal to charge the capacitor;

means to access a predetermined set of charge time measurement set-up parameters and a predetermined elective replacement time (ERT) charge time limit associated with an AC impedance target for the battery, **the predetermined set of charge time measurement set-up parameters including:**

a charged voltage reference (VF) to end a charge time measurement for determining the rate of charge storage in the capacitor;

an initial voltage reference (VI) to begin the charge time measurement for determining the rate of charge storage in the capacitor; and

a discharge voltage reference (Vd) to which the capacitor is discharged prior to beginning the time measurement for determining the rate of charge storage in the capacitor, Vd being less than VI;

means to determine a rate of charge storage in the capacitor using the predetermined set of charge time measurement set-up parameters;

means to compare the determined rate of charge storage in the capacitor to the predetermined ERT charge time limit for the predetermined set of charge time measurement set-up parameters; and

means to declare an ERT based on a number of comparisons between the determined rate of charge storage in the capacitor and the ERT charge time limit.

In the response to Applicant's arguments, the Office has not even asserted that Kroll shows a discharge voltage that is less than an initial voltage reference to begin the charge time measurement, nonetheless shown that Kroll shows a discharge voltage that is less than an initial voltage reference to begin the charge time measurement.

The Office relies on "inherency," asserting that it is inherent that the system use some predetermined programmed beginning and ending voltage (VI and VF) in order to measure this rate of charge since the capacitor has to be charged from some initial voltage to some final voltage to have a rate of charge. In the response to Applicant's arguments, the Office has not addressed the discharge voltage, and Applicant respectfully submits that it is not inherent that the system use charge time measurement set-up parameters that includes an initial voltage reference that is more than a discharge voltage. The Office has not established that this is necessarily present in Kroll and a person of ordinary skill would recognized its presence.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 10-25-07

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25 day of October 2007.

Nicole [illegible]

Name

Signature